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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,116	02/20/2004	Phillip E. Schlagen	S324.12.5	1205

7590 06/01/2006  
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EXAMINER
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GREENHUT, CHARLES N

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,116	<b>Applicant(s)</b> SCHLANGEN, PHILLIP E.	
	<b>Examiner</b> Charles N. Greenhut	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 4/14/06.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 10-18 and 29-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 19-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) 1-37 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**I. Election/Restriction**

1. Amended claims 10-18 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Group I: Claims 1-9, and 19-28 are drawn to an apparatus for lifting, classified in class 187, subclass 200.

Group II: Claims 10-18 and 29-37, drawn to the combination of vehicle and an apparatus for lifting, classified in class 414, subclass 541.

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed for patentability because, the subcombination does not require the vehicular connection. In remarks entered 4/14/06, applicant relies on the newly recited features of the vehicular connection with an apparatus for lifting to assert patentability of claims 10 and 29. This evidences the fact that applicant agrees the combination as claimed does not require the particulars of the subcombination as claimed for patentability. In addition, the subcombination has separate utility, such as, use elsewhere.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 10-18 and 29-37 are withdrawn from

consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

## **II. Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claim(s) 1-2, 9, 19-21, and 28 is/are rejected under 35 U.S.C. 102(e) as being anticipated by

WILLIAMS (US 6,726,435 B1).

1.1. With respect to claim 1 and 19, WILLIAMS discloses a lift assembly (Fig. 2 providing movement C) upright first member (50), upright second member movably mounted on the first (54), linear actuator (Col. 3 Li. 61), platform (12), coupling mechanism (56), a transport assembly (Fig. 2 providing movement A), first beam (16), second beam movably mounted on the first (14), second linear actuator (48), and anchors (38).

1.2. With respect to claim 2 and 20, WILLIAMS additionally discloses tubular members and the first actuator therewithin (Col. 3 Li. 61).

1.3. With respect to claim 9 and 28, WILLIAMS additionally discloses box beams (16)/(14).

1.4. With respect to claim 21, WILLIAMS additionally discloses a motor vehicle seat (Col 1. Li 27).

### **III. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 3-4, and 22-23 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over WILLIAMS (US 6,726,435 B1) in view of WILLEY (US 6,478,529 B1).

1.1. With respect to claim 3, WILLIAMS fails to teach a headrest. WILLEY teaches a headrest (84). It would have been obvious to one of ordinary skill in the art to modify WILLIAMS with the headrest of WILLEY in order to promote the safety of the occupant.

1.2. With respect to claim 4, WILLIMAS fails to teach a horizontal member, connecting means and an upright plate. WILLEY teaches a horizontal member (82), connecting means (80) and an upright plate (Fig. 3). It would have been obvious to one of ordinary skill in the art to modify WILLIMAS with the headrest support members of WILLEY in order to ensure stability of the headrest.

1.3. With respect to claim 22, WILLIAMS fails to teach a headrest. WILLEY teaches a headrest (84). It would have been obvious to one of ordinary skill in the art to modify WILLIAMS with the headrest of WILLEY in order to promote the safety of the occupant.

1.4. With respect to claim 23, WILLIMAS fails to teach a horizontal member, connecting means and an upright plate. WILLEY teaches a horizontal member (82), connecting means (80) and an upright plate (Fig. 3). It would have been obvious to one of ordinary skill in the art to modify WILLIMAS with the headrest support members of WILLEY in order to ensure stability of the headrest.

2. Claim(s) 5-6, and 24-25 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over WILLIAMS in view of MEYER (US 5,466,111 A).

2.1. With respect to claim 5, WILLIAMS additionally teaches a plurality of holes. WILLIAMS fails to teach the holes accommodating anchors. MEYER teaches holes (87) accommodating anchors (84). It would have been obvious to one of ordinary skill in the art to modify WILLIAMS with the holes accommodating anchors of MEYER in order to secure the platform while the vehicle is in motion.

2.2. With respect to claim 6, WILLIAMS fails to teach upright pins having upper ends located in said holes and nuts threaded on the pins. MEYER teaches upright pins having ends located in the holes and nuts threaded thereon. It would have been obvious to one of ordinary skill in the art to modify WILLIAMS with the pins and nuts of MEYER in order to secure the platform to the support while the vehicle is in motion. While MEYER teaches the pins on a platform and holes on a support mounted to the vehicle, it would have been obvious to one of ordinary skill in the art to modify the arrangement to have the pins on the support and holes on the platform so as to minimize obstructions on the moving platform.

2.3. With respect to claim 24, WILLIAMS additionally teaches a plurality of holes.

WILLIAMS fails to teach the holes accommodating anchors. MEYER teaches holes (87) accommodating anchors (84). It would have been obvious to one of ordinary skill in the art to modify WILLIAMS with the holes accommodating anchors of MEYER in order to secure the platform while the vehicle is in motion.

2.4. With respect to claim 25, WILLIAMS fails to teach upright pins having upper ends located in said holes and nuts threaded on the pins. MEYER teaches upright pins having ends located in the holes and nuts threaded thereon. It would have been obvious to one of ordinary skill in the art to modify WILLIAMS with the pins and nuts of MEYER in order to secure the platform to the support while the vehicle is in motion. While MEYER teaches the pins on a platform and holes on a support mounted to the vehicle, it would have been obvious to one of ordinary skill in the art to modify the arrangement to have the pins on the support and holes on the platform so as to minimize obstructions on the moving platform.

3. Claim(s) 7-8, and 26-27 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over WILLIAMS in view of VARRICHIO (US 5,421,692 A)

3.1. With respect to claim 7, WILLIAMS fails to teach a horizontal slot and stop bolt.

VARRICHIO teaches a horizontal slot (12) and stop bolt (36). It would have been obvious to one of ordinary skill in the art to modify WILLIAMS with the horizontal slot and stop bolt of VARRICHIO in order to secure the wheelchair to the platform.

3.2. With respect to claim 8, WILLIAMS fails to teach a generally horizontal top wall having inwardly converging inside edges providing a generally V-shaped mouth and

a linear slot open to the mouth. VARRICHIO teaches a generally horizontal top wall having inwardly converging inside edges providing a generally V-shaped mouth and a linear slot open to the mouth (12).

3.3. With respect to claim 26, WILLIAMS fails to teach a horizontal slot and stop bolt. VARRICHIO teaches a horizontal slot (12) and stop bolt (36). It would have been obvious to one of ordinary skill in the art to modify WILLIAMS with the horizontal slot and stop bolt of VARRICHIO in order to secure the wheelchair to the platform.

3.4. With respect to claim 27, WILLIAMS fails to teach a generally horizontal top wall having inwardly converging inside edges providing a generally V-shaped mouth and a linear slot open to the mouth. VARRICHIO teaches a generally horizontal top wall having inwardly converging inside edges providing a generally V-shaped mouth and a linear slot open to the mouth (12).

#### **IV. Response to Applicant's Arguments**

Applicant's arguments entered 4/14/06 have been fully considered but are not persuasive.

1. Applicant argues that WILLIAMS does not anticipate claims 1 and 19, as amended, because WILLIAMS fails to disclose the platform can be moved downward to a fourth location. This argument is not persuasive. Firstly applicant is arguing limitations not recited in the claim. The claims merely require "an actuator operable to move the platform downward...to the fourth location." Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. Furthermore, a recitation of the capabilities of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention



from the prior art. If the prior art structure is capable of performing the function, then it meets the claim. The WILLIAMS actuator is capable of performing such a function. Applicant argues that the WILLIAMS actuator is not capable of this function because the platform, as shown in figure 1, has no room to move downwards. While applicants interpretation of figure 1 of WILLIAMS is understandable, applicant is improperly assuming, based on that figure, that the absolute upper limit of travel of lift mechanism (24) corresponds to its lower limit of travel when in the figure 1 position. WILLIAMS, however, does not disclose that the lift mechanism is restricted in such a way and it is improper for applicant to impose such a restriction on the WILLIAMS apparatus.

2. With respect to claims 3 and 4, applicant argues that it is improper to combine WILLIAMS and WILLEY under 35 U.S.C. 103(a) because such a combination would be non-functional. This argument is not persuasive. The test for obviousness is not whether the features of the secondary reference WILLEY may be bodily incorporated into the structure of the primary reference WILLIAMS, the test is what the combined teachings of WILLIAMS and WILLEY would have suggested to those of ordinary skill in the art. It is not necessary that the inventions of WILLIAMS and WILLEY be physically combinable to render obvious the invention under review. Combining the teachings of WILLIAMS and WILLEY does not require the ability to combine their specific structures.
3. Applicant argues that WILLIAMS does not anticipate claims 1, 7-8 and 19, as amended, because WILLIAMS fails to disclose anchors for holding the platform in the forth location. This argument is not persuasive. As noted above, anchors are clearly disclosed, for example, at (38).

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4. Applicant argues that WILLIAMS does not anticipate claims 7-8, as amended, because the WILLIAMS latch is not the claimed stop bolt. This argument is not persuasive. Element (36) of WILLIAMS is sufficient to be a “stop bolt” within the broadest reasonable interpretation of that term.
5. Applicant argues that claims 10 and 29, as amended, define over the prior art. Applicants argument is premised on additional limitations, entered by amendment, directed to the details of the connection between the apparatus for lifting and a vehicle. Since this combination is directed to an invention that is independent or distinct from the invention originally claimed, of an apparatus for lifting , claims 10-18 and 29-37 are withdrawn as constructively non-elected by original presentation. Further search and/or consideration is required to determine the patentability of these claims. Accordingly, applicants arguments with respect to claims 10-18 and 29-37 are not ripe for discussion and are therefore not addressed at this time.

## **V. Conclusion**

1. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



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